GOVERNEMNT OF ANDHRA PRADESH
ABSTRACT

Public Services – Commercial Tax Department – General Administration (Vigilance & Enforcement) Department - Certain irregularities noticed in issuing irregular refunds granted in the case of M/s A.V. Rambabu, Ongole – Preliminary enquiry conducted – Certain irregularities noticed – Recommended for initiation of departmental action against Sri M. Satya Prakash, the then Commercial Tax Officer - II, Ongole, presently working as Assistant Commissioner (Commercial Tax), Ananthapur – Draft Article of charges issued – Written Statement of Defecne called for - Regarding.

REVENUE (VIGILANCE-II) DEPARTMENT

G.O.Rt.No.857 Dated:06-08-2016.

Read the following:-

Ref: 1. From DG, General (V&E) & E.O. Prl. Secy., to Government report No.96 (C.No.189/V&E/R1/2014), dated: 26.05.2014.
2. From the CCT,Ref.No.V1/170/2011, dated: 23.07.2016.

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ORDER:

1) It is proposed to hold an Inquiry against Sri M. Satya Prakash, the then Commercial Tax Office - II, Ongole, presently working as Assistant Commissioner (Commercial Tax), Ananthapur in accordance with the procedure laid down in Rule-20 of the Andhra Pradesh Civil Services (Classification, Control & Appeal) Rules, 1991.

2) The substance of the imputations of misconduct/misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed as (Annexure-I). A statement of imputations misbehavior in support of the article is also enclosed as (Annexure-II). A list of documents by which the articles of charges are proposed to be sustained is also enclosed in Annexure-III.

3) Sri M. Satya Prakash, the then Commercial Tax Office-II, Ongole, presently working as Assistant Commissioner (Commercial Tax), Ananthapur is directed to submit his explanation within fifteen(15) days from the date of receipt of this memo i.e., written statement of his defense and to state whether he desires to be heard in person.

4) Sri M. Satya Prakash, the then Commercial Tax Office-II, Ongole, presently working as Assistant Commissioner (Commercial Tax), Ananthapur is informed that an inquiry will be held only in respect of those articles of charges which are not admitted, he should therefore specifically admit or deny each article of charge.

5) Sri M. Satya Prakash, the then Commercial Tax Office-II, Ongole, presently working as Assistant Commissioner (Commercial Tax), Ananthapur is further informed that if he does not submit his written statement of defense on or before the time specified in para-3 above, further action will be initiated based on the material available.

6) Attention of Sri M. Satya Prakash, the then Commercial Tax Office-II, Ongole, presently working as Assistant Commissioner (Commercial Tax), Ananthapur is invited to Rule-24 of Andhra Pradesh Civil Services (Conduct) Rules, 1964 under which no Government Servant shall bring or attempt, to bring any political or outside influence to bear upon any superior authority

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to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt within these proceedings it will be presumed that Sri M. Satya Prakash, the then Commercial Tax Office-II, Ongole, presently working as Assistant Commissioner (Commercial Tax), Ananthapur is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule-24 of the Andhra Pradesh Civil Services (Conduct) Rules, 1964.

7) The receipt of the Charge Memo, may be acknowledged.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

AJEYA KALLAM
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To
Sri M. Satya Prakash, the then Commercial Tax Office-II, Ongole,
presently working as Assistant Commissioner (Commercial Tax)
Ananthapur (through the Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad)

Copy to :

The Commissioner of Commercial Taxes,Andhra Pradesh, Hyderabad.
The Deputy Commissioner, Commercial Tax, Andhra Pradesh, Anantapur
SC/SF

//FORWARDED :: BY ORDER//

SECTION OFFICER

ANNEXURE-I

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SRI M. SATYA PRAKASH, THE THEN CTO-II, ONGOLE, PRESENTLY WORKING AS ASSISTANT COMMISSIONER (CT), ANANTHAPUR.

ARTICLE OF CHARGE:

That the said Sri M. Satya Prakash, the then Commercial Tax Office-II, Ongole, presently working as Assistant Commissioner (Commercial Tax), Ananthapur committed grave irregularities in granting the refund of taxes of Rs.16,30,949/-, in respect of M/s A.V.Rambabu, Ongole for the year 2008-09 without giving due regards to the provisions under section 22(3A), Sec.57 and other relevant provisions of the Andhra Pradesh VAT 2005, and failed to exercise due diligence in granting the said, causing loss to the public exchequer and correspondingly allowing unlawful pecuniary gain to an extend of Rs. 16,30,949/- to the dealer. Thus it is a clear case of dereliction of duty, willful negligence and criminal misconduct on the part of the said officer.

Thus, Sri M. Satya Prakash, the then Commercial Tax Office -II, Ongole, presently working as Assistant Commissioner (Commercial Tax), Ananthapur, by his above mentioned acts, exhibited lack of integrity, devotion to duty, conduct unbecoming of a Government Servant in violation to the provisions under rule 3(1) and (2) of Andhra Pradesh Civil Services (conduct) Rules, 1964.

AJEYA KALLAM
SPECIAL CHIEF SECRETARY TO GOVERNMENT

-//FORWARDED :: BY ORDER//-

SECTION OFFICER

ANNEXURE-II

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLES OF CHARGE FRAMED AGAINST SRI M. SATYA PRAKASH, THE THEN CTO-II, ONGOLE, PRESENTLY WORKING AS ASSISTANT COMMISSIONER (CT), ANANTHAPUR.

It has been brought to the notice of the undersigned by the Director general & E.O, Principal Secretary to Government, General Administration (Vigilance & Enforcement) Department that an enquiry was conducted based on the allegations relating to illegal refund of taxes by M. Satya Prakash, the then Commercial Tax Officer-II, Ongole, presently working as Assistant Commissioner (Commercial Tax), Ananthapur to the work contractors i.e., of M/s A.V. Rambabu, Ongole. The enquiry report furnished by the Director general & E.O, Principal Secretary to Government, General Administration (Vigilance & Enforcement) Department reveals that the amount of tax collected at source (TCS), which was added separately over and above the consideration for the execution of work, payable by the contractee was unlawfully refunded. In the instant case, the contractee is a Government contractor i.e., M/s A.V. Rambabu, Ongole and the estimates procured from the Irrigation Department clearly shows that The amount of tax was separately added to the consideration for execution of works and the same tax, when found to be in excess of the tax liability of the dealer ought to have been fortified as per the Andhra Pradesh VAT Rules, but was refunded without going into the full facts of the case.

It is clear case of dereliction of duty, willful act of negligence and criminal misconduct on the part of the said officer, and the details of the case are as under:

The inclusion case of tax component in the estimates as per the G.O.Ms.No.94, Irrigation and CAD (PW-COD) Department, dated: 01.07.2003, the following provisions is permitted to be added in the estimate.

1) Tax at the rate of 2% for items relating to canal digging, lining, repairing road works etc., where the earth work excavation and embankment is involved and for works other then the above, tax at 4% shall be added in the data.

As per the G.O.Ms.No.94, addition of tax in the estimates of various Engineering Departments is permitted.

As per the EPC guidelines, the estimates prepared by the contractor shall be deemed to be inclusive of taxes and duties on all the materials that the contractor has to purchase for performance of the contract. Accordingly the Input Tax paid by the contractor on his inputs is also being provide by the Contractee i.e., Government of Andhra Pradesh so the contractor is not entitled to claim Input Tax Credit also.

As per the Sales Tax Act provisions, the contractor has to pay tax when the work is executed and transferred to the contractee to payment. This burden is also borne by the contractor i.e., Government of Andhra Pradesh up on finalization of estimates, the contractee (Government) making provision for work contract tax i.e., either 4% or 2.8% based on the nature of contract over the Estimated contract value (Encumbrance Certificate), regardless whether the goods involved in works are taxable or not.

The Contractee i.e., Government of Andhra Pradesh being a tax levying and collecting authority, made that tax provision (TCS) in the Government works to comply is own statute (Andhra Pradesh VACT ACT -

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2005) and collecting it back in the form of book adjustment when payments are made to the contractors.

Further, having thought that there were possibilities for unjust enrichment to the contractors, the Government carefully inserted exclusive provisions in the Andhra Pradesh VAT Act 2005 to safeguard its money and issued necessary GOs and Memos and to comply the said GOs and Memo instructions of Government, the commissioner of Commercial Taxes, issued several clarifications by time to time in this regard.

On perusal of refund file of M/s A.V.Rambabu, Ongole, it was found that assessments were made by officers of C.T.Depatment for the periods from 2007-08, 2008-09 relating to civil works executed works Contractor under KWS Improvement Scheme, MWS(Markapur Miunicipality) , Nagarjuna Sagar Right canal. The estimates prepared by the Contractee Government Department were obtained from the following departments:-

1. Executive Engineer, Public Health Division, Ongole.
2. Executive Engineer Irrigation Department, Ongole.
3. Executive Engineer, Public Health Division, Tirupathi.

The estimates prepared by the Contractee Government Department are found to be inclusive of taxes which are separately earmarked in the estimates. The details of the refunds are as under:

Sl. No.	Year	Amount of refund	Name & Designation of Officer	Irregularities observed
	2008-09	Rs.16,30,949/-	Sri M. Satya Prakash, the then Commercial Tax Office, Ongole-II circle, presently working as Assistant Commissioner (Commercial Tax), Ananthapur.	Forwarded irregular refund proposal to the Deputy Commissioner (Commercial Tax)

Thus, the above mentioned Acts, by the Sri M. Satya Prakash, the then Commercial Tax Office-II, Ongole, presently working as Assistant Commissioner (Commercial Tax), Ananthapur division, while functioning as Commercial Tax Office-II, Ongole circle, has showed gross negligence while doing their official duty causing loss of revenue to the State exchequer, and in not obeying the Government orders and as well as instructions of the higher authorities and contravened Rule 3 of the of Andhra Pradesh Civil Services (conduct) Rules, 1964.

AJEYA KALLAM
SPECIAL CHIEF SECRETARY TO GOVERNMENT

-//FORWARDED :: BY ORDER//-

SECTION OFFICER

ANNEXURE-III

LIST OF DOCUMENTS BY WHICH ARTICLES OF CHARGES FRAMED AGAINST SRI M. SATYA PRAKASH, THE THEN CTO-II, ONGOLE CIRCLE AND PRESENTLY WORKING AS ASSISTANT COMMISSIONER (COMMERCIAL TAX), ANANTHAPUR.

General Administration (Vigilance & Enforcement) Department Vigilance Report No.96 (C.No.189/V&E/R1/2014), dated:26.05.2014.

AJEYA KALLAM
SPECIAL CHIEF SECRETARY TO
GOVERNMENT

-//FORWARDED :: BY ORDER//-

SECTION OFFICER